

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re: : Case No.: 14-54319
:
Darcell Lee McLain : Chapter 7
and :
Kathryn Anne McLain : Judge Caldwell
:
Debtors. :
.....

Larry J. McClatchey, Trustee : Adversary Case No.:_____
65 E. State Street :
Suite 1800 :
Columbus, Ohio 43215 :
:
v. :

McLains Lawn Care Service, Inc. :
c/o Darcell L. McLain, President :
13274 Fancher Road :
Westerville, Ohio 43082 :
:

Darcell L. McLain :
dba **McLains Lawn Care Service** :
13274 Fancher Road :
Westerville, Ohio 43082 :
:

US Small Business Administration :
Attn: Martin D. Golden :
Columbus District Office :
401 N. Front Street :
Suite 200 :
Columbus, Ohio 43215 :
:

US Small Business Administration :
Attn: Maria Contreras-Sweet, Administrator :
409 Third Street, SW :
Washington, DC 20416 :
:

Ohio Department of Job & Family Services :
Revenue Recovery-Litigation :
PO Box 182404 :
Columbus, Ohio 43218-2404 :
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State of Ohio :
Department of Taxation :
Bankruptcy Division :
PO Box 530 :
Columbus, Ohio 43216 :
:
:
Trupointe Cooperative, Inc. :
aka Trupointe CO OP :
C/O Larry Hammond, Statutory Agent :
215 Looney Road :
Piqua, Ohio 45356 :
:
Defendants. :

ADVERSARY PROCEEDING COMPLAINT

1. This case was commenced by voluntary petition seeking relief under chapter 7 of the Bankruptcy Code filed by Darcell Lee McLain and Kathryn Anne McLain (“Debtors”) on June 16, 2014 on June 16, 2014 (“Petition Date”).

2. Plaintiff is the duly authorized and acting Trustee in this case.

3. This Court has jurisdiction in this matter pursuant to the provisions of 28 U.S.C. §1334, §157 and the general order of reference for this district. This complaint sets forth a core proceeding as provided in 28 U.S.C. §157(b)(2)(K), (M) and (N).

4. Defendant McLain Lawn Care Service, Inc. (“MLCS”) was an Ohio corporation operated by Debtors between March 4, 1994 and December 31, 2011.

5. On or about November 4, 2011, MCLS transferred the trade name “McLain’s Lawn Care Service” to Darcell L. McLain. Effective December 31, 2011, Debtors caused the dissolution of MLCS.

TRANSACTIONS

6. On or about January 11, 2005, MLCS acquired a parcel of real estate generally known as 3080 Lamb Ave., Columbus, Ohio 43219 ("Property"), more particularly described as follows:

Situated in the State of Ohio, County of Franklin, City of Columbus and bounded and described as follows: Being Lot Number Nine (9), Ten (10), and Eleven (11), block K, in Elmhurst Subdivision Number "2" of Lamb Suburban Addition, is the same as is numbered and delineated upon the recorded plat thereof, of record in Plat Book 11, page 19, Recorder's Office, Franklin County, Ohio.

Auditor's Permanent Parcel Numbers: 010-158377-00, 010-158378-00, and 010-158376-00.

7. On or about January 11, 2005, MLCS conveyed an interest in the Property to Huntington National Bank ("HNB") pursuant to a mortgage deed recorded in the Franklin County Recorder's Office as Instrument Number 200501110007208 ("HNB Mortgage"). MLCS granted the HNB Mortgage to secure a loan made by HNB to MLCS in the original principal amount of \$105,000.00.

8. The interest of HNB in the Property is the first and best lien on the Property, other than for real estate taxes. HNB is not named as a defendant in this action because it has given its written consent to the relief requested by Trustee herein, on the condition that its interest be protected by Plaintiff in any subsequent sale of the Property.

9. On or about February 18, 2005, MLCS conveyed the Property to Community Capital Development Corp. ("CCDC") pursuant to a mortgage deed that was recorded in the Franklin County Recorder's Office as Instrument Number 200502180030620 to secure a loan in the amount of \$90,000.00 ("SBA Mortgage").

10. On or about February 18, 2005, CCDC assigned the SBA Mortgage to United States of America, Small Business Administration, by instrument recorded in the Franklin County Recorder's Office as Instrument No. 200502180030629.

11. MLCS also executed and delivered to CCD an Assignment of Rents that was recorded in the Franklin County Recorder's Office as Instrument No. 200502180030625. In December of 2005, the Assignment of Rents was subordinated in favor of an Assignment of Rents that had been granted to HNB.

12. On or about November 4, 2011, MLCS conveyed the Property to Debtors by deed recorded in the Franklin County Recorder's Office as Instrument No. 201111040143285.

13. Defendant Ohio Department of Jobs and Family Services has or may claim an interest in the Property by virtue of a Notice of Lien filed against MLCS on May 17, 2012, to secure a claim in the amount of \$871.07 that was recorded in the Franklin County Recorder's Office Instrument No. 201205170069095.

14. Defendant State of Ohio Department of Taxation has or may claim an interest in the Property by virtue of Certificates of Judgment filed against MLCS on February 20, 2007, August 4, 2011, and October 5, 2011 which liens are more particularly identified on attached Exhibit A.

15. Defendant Trupointe Cooperative, Inc. aka Trupointe CO OP has or may claim an interest in the Property by virtue of a Certificate of Judgment, Case No. 13JG037127 recorded August 7, 2013 to secure a judgment against Darcell L. McLain in the amount of \$2,331.34.

16. Defendant State of Ohio Department of Taxation has or may claim an interest in the Property by virtue of a series of Certificates of Judgment to secure claims against Debtors

between April 15, 2014 and MLCS on or about February 25, 2014 and April 21, 2014 which are more particularly described in Exhibit B.

FIRST CLAIM

17. The allegations in the proceeding paragraphs are incorporated by reference.
18. The Property is property of the bankruptcy estate which Trustee is authorized to sell, other than in the ordinary course of business, pursuant to 11 U.S.C. §363(d)(1).
19. One or more of the Defendants, other than MLCS, may be entitled to adequate protection of an interest in the Property pursuant to the provisions 11 U.S.C. §363(e).
20. Trustee is authorized to sell the Property free and clear of any interest in such property of all Defendants because applicable non-bankruptcy law permits sale of such property free and clear of such interest and/or Defendants could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.
21. The interest of State of Ohio, Department of Taxation, if any, on account of the Certificates of Judgment set forth on Exhibit B, as to Debtors, are subject to a *bona fide* dispute in that the security interest was perfected within 90 days before the Petition Date, and the interest are avoidable by Trustee pursuant to the provisions of 11 U.S.C. §547(a).

WHEREFORE, Trustee respectfully requests judgment authorizing him to sell the Property, free and clear of any interest of any Defendants therein; to the extent a Defendant asserts an unavoidable lien, that the judgment provide for transfer of the lien to the proceeds for subsequent determination of the validity and extent of the lien; and for such other further relief to which Plaintiff may be entitled.

/s/Larry J. McClatchey

Larry J. McClatchey, Trustee (0012191)
Kegler, Brown, Hill & Ritter
65 E. State Street, Suite 1800
Columbus, Ohio 43215
Telephone (614)462-5400
Facsimile (614) 464-2634
lmcclatchey@keglerbrown.com

EXHIBIT A
Certificates of Judgment of State of Ohio Department of Taxation

DATE	CERTIFICATE OF JUDGMENT NUMBER	TAX PAYOR	AMOUNT
02/20/07	07-JG-003717	McLains Lawn Care Service, Inc.	\$3,038.31
02/20/07	07-JG-003718	McLains Lawn Care Service Inc.	\$2,972.08
02/20/07	07-JG-003719	McLains Lawn Care Service, Inc.	\$2,718.63
02/20/07	07-JG-003720	McLains Lawn Care Service, Inc.	\$3,427.17
02/20/07	07-JG-003721	McLains Lawn Care Service, Inc.	\$3,306.39
08/04/11	11-JG-028639	McLains Lawn Care Service, Inc.	\$5,776.09
08/04/11	11-JG-028640	McLains Lawn Care Service, Inc.	\$5,909.71
10/05/11	11-JG-039965	McLains Lawn Care Service, Inc.	\$4,917.59

EXHIBIT B
Certificates of Judgment of State of Ohio Department of Taxation

DATE	CERTIFICATE OF JUDGMENT NUMBER	TAX PAYOR	AMOUNT
02/25/14	14-JG-007411	McLains Lawn Care Service, Inc.	\$1,541.54
04/15/14	14-JG-013040	Darcell L. McLain	\$6,172.57
04/15/14	14-JG-013041	Darcell L. McLain	\$5,917.77
04/21/14	14-JG-013763	Kathryn A. McLain	\$6,172.57
04/21/14	14-JG-013764	Kathryn A. McLain	\$5,917.77